

REMARKS

Introduction

The present application includes claims 83-102, wherein claims 83, 90, and 97 are presented in independent form. Applicants thank the Examiner for discussing this case with their representative, Ms. Christine E. Orich, by telephone on April 15, 2005. Applicants acknowledge with appreciation the Examiner's indication that claims 90-96 are allowed. In accordance with 37 C.F.R. § 1.116, Applicants have amended claims 83 and 97 to place the application in condition for allowance or to put the claims in better form for consideration on appeal. Applicants do not acquiesce in the Examiner's rejections, but instead have elected to make these amendments solely to expedite prosecution of the application leading to issuance of a patent.

Reconsideration and reversal of the rejection of the pending claims as amended is respectfully requested in light of the following remarks.

Request for Corrected Filing Receipt

Applicants respectfully refer to their Request for Correction of Filing Receipt mailed December 8, 2004. Applicants respectfully request a response to their Request for Correction of Filing Receipt.

Prior Art Rejections

The Examiner has rejected claims 83, 86, 87, 89, 97, and 99-101 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,862,529 to Peck (hereinafter "Peck"). The Examiner rejected claim 102 under 35 U.S.C. § 103(a) as being unpatentable over Peck in view of Houlberg et al., U.S. Patent No. 4,324,010.

§ 102(b) in view of Peck

Applicants respectfully submit that the Peck patent simply does not support the Examiner's rejection of claims 83, 86, 87, 89, 97, and 99-101 under 35 U.S.C. § 102(b). The case law clearly states that "anticipation requires that a single prior art reference disclose every limitation of the patent claim." General Electric Co. v. Nintendo Co., 50 USPQ2d 1910, 1915 (Fed. Cir. 1999) (citing PPG Industries, Inc. v. Guardian Industries Corp., 37 USPQ2d 1618, 1624 (Fed. Cir. 1996)) ("to anticipate a claim, a reference must disclose every element of the challenged claims and enable one skilled in the art to make the anticipating subject matter."). More particularly, the Federal Circuit has held that the test for anticipation is "[t]hat which would literally infringe if later in time anticipates if earlier than the date of

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invention.” Lewmar Marine, Inc. v. Barient, Inc., 827 F.2d 744, 3 USPQ2d 1776 (Fed. Cir. 1987), cert. denied, 484 U.S. 1007 (1988).

Peck relates to a hospital bed convertible to a chair. Peck includes a base frame 10, fixed frame 15, and a retracting frame 25. Additionally, Peck includes a head panel 31, a seat panel 30, a thigh panel 33, and a foot panel 37. “Seat panel 30 is fixedly secured to the retracting frame 25.” (See Peck Col. 3 ll. 45-46). Foot panel 37, thigh panel 33, and head panel 31 are all pivotable relative to retracting frame 25.

Claim 83

Peck fails to disclose, teach, or suggest a combination including a “deck including a head section, a seat section contiguous with the head section, the seat section being pivotable relative to the intermediate frame ” as recited in claim 83. Peck’s seat panel 30 is not pivotable with respect to an intermediate frame.

Therefore, Applicants believe that amended claim 83 is in condition for allowance with respect to Peck. Removal of the rejection and allowance of claim 83 is respectfully requested. If the Examiner should disagree with the Applicants’ arguments, the Examiner is asked to kindly point out with particularity where the limitation is expressly disclosed.

Claims 84-89

Claims 86, 87 and 89 depend from claim 83. In that claim 83 is believed to be allowable, claims 86, 87 and 89 are also believed to be allowable. Removal of the rejections and allowance of claims 86, 87 and 89 is respectfully requested.

Claims 84-85 depend from allowable generic claim 83. Accordingly, Applicants submit that claims 84-85 are appropriate for consideration and are likewise in condition for allowance.

Claim 88 depends from allowable generic claim 86. Accordingly, Applicants submit that claim 88 is appropriate for consideration and is likewise in condition for allowance.

Claim 97

Peck does not disclose, teach or suggest a combination including a “deck including a head section, a seat section pivotable relative to the intermediate frame... the seat section being located adjacent the head section,” as required by claim 97. Peck’s seat panel 30 is not pivotable as discussed above.

Applicants believe that claim 97 is in condition for allowance with respect to Peck. Removal of the rejection and allowance of claim 97 is respectfully requested. If the Examiner should disagree with the Applicants' arguments, the Examiner is asked to kindly point out with particularity where the limitation is expressly disclosed.

Claims 98-102

Claims 99-102 depend from claim 97. In that claim 97 is believed to be allowable, claims 99-102 are also believed to be allowable. Removal of the rejections and allowance of claims 99-102 is respectfully requested.

Claim 98 depends from allowable generic claim 97. Accordingly, Applicants submit that claim 98 is appropriate for consideration and is likewise in condition for allowance.

§ 103(a) over Peck in view of Houlberg et al.

Claim 102

Claim 102 depends from claim 97. In that claim 97 is believed to be allowable, claim 102 is also believed to be allowable. Removal of the rejection and allowance of claim 102 is respectfully requested.

Final Remarks

In view of the foregoing amendments and remarks, it is respectfully submitted that all of the solicited claims are condition for allowance. Such action is respectfully requested.

The Examiner is invited to contact the undersigned at the telephone number provided below should any question or comment arise during reconsideration of this matter.

If necessary, Applicants request that this Response be considered a request for an extension of time for a time appropriate for the response to be timely filed. Applicants request that any required fees needed beyond those submitted with this Response be charged to the account of Bose McKinney & Evans LLP, Deposit Account Number 02-3223.

Respectfully submitted,

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